



300 Carnegie Center | Suite 220 | Princeton, NJ 08540  
A Pennsylvania LLP | Stephen M. Orlofsky, New Jersey Administrative Partner  
blankrome.com

*Phone:* (609) 750-2648  
*Fax:* (609) 897-7288  
*Email:* [adrienne.rogove@blankrome.com](mailto:adrienne.rogove@blankrome.com)

November 11, 2021

**VIA ECF**

Hon. Michael A. Hammer, U.S.M.J.  
U.S. District Court for the District of New Jersey  
Martin Luther King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**RE: Merck & Co., Inc. et al. v. Merck KGaA,  
Civil Action No. 16-0266 (ES) (MAH)**

Dear Judge Hammer:

This firm, along with Debevoise & Plimpton LLP, represents Defendant Merck KGaA (“Defendant”) in the above-referenced matter. We submit this letter jointly with McCarter & English LLP and Sidley Austin LLP, counsel for Plaintiffs Merck & Co., Inc. and Merck Sharp & Dohme Corp. (“Plaintiffs”).

In accordance with the Court’s November 9, 2021, Order, the parties write to propose the following briefing schedule for Defendant’s motion for summary judgment:

|   |                   |
|---|-------------------|
| Defendant’s Motion for Summary Judgment and Supporting Papers | January 10, 2022  |
| Plaintiffs’ Opposition  | February 18, 2022 |
| Defendant’s Reply   | March 18, 2022    |

**BLANKROME**

Hon. Michael A. Hammer, U.S.M.J.

November 11, 2021

Page 2

Plaintiffs will not be filing a motion for summary judgment at this time,<sup>1</sup> and the parties do not intend to file pre-motion letters.

Respectfully submitted,



Adrienne C. Rogove

ACR:cdy

cc: All Counsel of Record (*via ECF*)

---

<sup>1</sup> Merck KgaA objects to US Merck's suggestion that it may make a summary judgment motion later. Pursuant to the Court's November 9, 2021, Order directing the parties to propose "a briefing schedule for *any* summary judgment motion," Dkt. No. 176 (emphasis added), this is the time for the parties to meet and confer on *any* possible summary judgment motions. The parties have done so and US Merck has not identified any topic on which it intends to move for summary judgment. Should US Merck attempt to file a summary judgment motion in the future, Merck KGaA reserves the right to object and/or seek a new schedule for summary judgment briefing.

Plaintiffs' response: Defendant's objection is unwarranted. Plaintiffs have explained to Defendant that Plaintiffs have no present intention to file a summary judgment motion at a later date, but understand that the Federal Rules permit such a motion to be made in the event of circumstances deemed appropriate by the Court. *See Fink v. Kirchner*, No. Civ. 12-4125 (NLH) (KMW), 2016 WL 1337257, at \*1 n.1 (D.N.J. Apr. 5, 2016) (stating that "nothing in the [Federal] Rules precludes a party from filing successive motions to dismiss or summary judgment motions, if justified by the circumstances of the case"), *aff'd*, 731 F. App'x 157 (3d Cir. 2018).